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FISCAL IMPACT STATEMENT

LS 6545

BILL NUMBER: HB 1443

NOTE PREPARED: Feb 19, 2009

BILL AMENDED: Feb 19, 2009

SUBJECT: Expungement of Certain Conviction Records.

FIRST AUTHOR: Rep. Turner

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill allows a sentencing court to expunge the records of certain felony and misdemeanor convictions committed before a person was 25 years of age if 12 years have passed since: (1) the completion of the person's sentence; and (2) the satisfaction of any other obligations imposed on the person as a part of the sentence. The bill allows a law enforcement agency, prosecuting attorney, or court to gain access to permanently sealed records under certain circumstances.

The bill also provides that if a court orders a person's records to be expunged, the person: (1) shall be treated for all purposes as if the person had not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records; and (2) may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records.

The bill also provides that if an inmate in the Department of Correction (DOC) requests to have a tattoo removed before being released from the DOC, the DOC may pay expenses related to the tattoo removal and provide the tattoo removal before the inmate's release date.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) *Summary:* The Indiana State Police (ISP) maintains the criminal history data base. Any additional staff and computer time required would likely be within their existing level of resources. The bill will also increase expenditures to the DOC to the extent they provide tattoo removal to offenders.

(Revised) Background Information:

Conviction Record Expungement: Under current law, conditions exist where courts can seal arrest records from disclosure and order limited criminal history information to be either destroyed or restricted.

(1) Arrest Records: IC 35-38-5-1 allows an individual to petition the court for expungement of arrest records under the following conditions: (a) an arrest does not lead to the filing of criminal charges, or (b) criminal charges are dropped due to mistaken identity, no offense was committed, or a lack of probable cause. When an expungement is granted, state law prohibits any information concerning the arrest from being placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency.

(2) Limited Criminal History: IC 35-38-5-5 allows a person to petition ISP to limit access to an individual's limited criminal history information to criminal justice agencies if more than 15 years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime. However, this does not apply to individuals that (a) have volunteered services involving contact with, care of, or supervision of a child who is under the discretion of a social services agency or nonprofit corporation, or (b) is being sought after by the parent locator service of the Child Support Bureau in the Department of Child Services.

Data Available: [Note: The information contained in this section is current as of 2007 and will be updated as provided by the Indiana State Police.] Between 1997 and 2007, 158 persons were granted pardons for an average of approximately 16 per year.

No information was available on the number of criminal convictions where sentences have been vacated or findings of guilt have been set aside. Additionally, it is not known how many individuals would qualify for record expungement under the provisions of the legislation.

Expungement would eliminate access to criminal history files to companies that specialize in background checks. ISP reports that of the 2.1 million criminal history files it maintains, the criminal history information on 107 persons is not available to these companies.

Criminal History Files Maintained by the Indiana State Police		
Not Limited	2,150,999	99.995%
Limited Access for Noncriminal Justice Agencies	107	0.005%
Total Files	2,151,106	

ISP staff also report that they receive between one and three requests each month to limit access for noncriminal justice agencies.

Tattoo Removal: DOC has a laser machine that is used to remove tattoos at the request of offenders after being screened by counselors. However, the bulb needs to be replaced, the cost of which is estimated at \$10,000. The work is performed by a volunteer plastic surgeon.

If DOC were to significantly expand its work with tattoo removal, it would have to buy additional laser

machines and perhaps increase the number of physicians who would perform these procedures. Each machine ranges between \$45,000 and \$100,000 in price. Currently, two physicians on staff in DOC have had experience with laser tattoo removal.

Explanation of State Revenues: *Court Fee Revenue:* The legislation allows an individual whose records were expunged to bring civil action under certain circumstances. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: The following provisions would likely have a minimum effect on the workload of trial courts.

This bill allows for an expungement petition for individuals that (1) committed an offense before the age of 25, (2) 12 years have elapsed since the completion of that person's sentence, and (3) the conviction was not a disqualifying offense as defined in the legislation. This would likely have a minimal impact on trial courts. Any added costs to the state court system will depend on the frequency of petitions filed by ex-offenders. The added workload for a court would depend on whether the judge accepts or denies the petition. If the court accepts the petition, then the court would likely hold a hearing to determine whether the individual has been rehabilitated as well as other mitigating factors. The court will have final determination in granting expungement of criminal records.

If a law enforcement agency, prosecuting attorney, or court submits a written application to gain access to permanently sealed records, the workload of individual courts could increase. The impact will depend on whether the court reviewing the application needs to hold hearings to discuss the reason for releasing the records and whether the ex-offender contests the application. If applications are not contested, then the costs to the court are likely to be minimal.

The legislation allows a law enforcement agency, prosecuting attorney, or another court to submit a request to an expungement-granting court for access to these sealed records provided there is good cause. If good cause is demonstrated, then the expungement-granting court is required to order the records unsealed and provide access to the requesting party.

Background Information: Under current law, an individual has no legal foundation to petition the court to expunge the records of an arrest unless no criminal charges were filed, all criminal charges were dropped, the individual had been mistaken for another person, no offense had been committed, or there was an absence of probable cause. Regulations concerning juvenile record expungement are more relaxed than petitions for adult record expungement. When filing for expungement, the request is filed under the original cause number that was assigned when the case was first filed. The Division of State Court Administration reports there would be no fees assessed as these fees would have been paid when the case was first disposed.

The Division of State Court Administration reports that the number of expungement requests are indeterminable. This information is specific to particular cases and is not reported to the Division. Petitions

for the disclosure of arrest records are rarely filed, and information concerning requests are not uniformly collected. Additionally, the Division of State Court Administration does not require courts to report how many cases have been put aside or how many convictions have been vacated.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: ISP.

Local Agencies Affected: Trial courts, Local law enforcement agencies.

Information Sources: ISP; Jim Diller, State Court Administration; Tim Brown, DOC.

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